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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/807,290 | 07/16/2001 | Reinhard Evers | WK-188 | 5951 |

7590 07/31/2002

Mattingly Stanger & Malur
104 East Hume Avenue
Alexandria, VA 22301

EXAMINER

PARSLEY, DAVID J

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3643

DATE MAILED: 07/31/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/807,290

Applicant(s)

EVERS ET AL.

Examiner

David J Parsley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 11-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 11-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

PETER M. POON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 July 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6. 6) ☐ Other: ____

Detailed Action

Preliminary Amendment

1. Applicant's preliminary amendment was received and the changes to the application have been noted. Claims 1-7 and 11-13 are now pending with claims 8-10 being canceled.

Priority

2. An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification or in an application data sheet (37 CFR 1.78(a)(2) and (a)(5)).

Specification

3. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables

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having more than 50 pages of text are permitted to be submitted on compact discs.) or

REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a).

"Microfiche Appendices" were accepted by the Office until March 1, 2001.)

(e) BACKGROUND OF THE INVENTION.

(1) Field of the Invention.

(2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.

(f) BRIEF SUMMARY OF THE INVENTION.

(g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).

(h) DETAILED DESCRIPTION OF THE INVENTION.

(i) CLAIM OR CLAIMS (commencing on a separate sheet).

(j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

(k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

The headings listed above should be used where applicable in the specification.

4. The disclosure is objected to because of the following informalities: on page 10 in the list of reference numbers, reference numerals 25 and 26 need to be resolved as seen in the Drawings section below.

On page 5 lines 4-6, this paragraph as written appears to make figure 3 prior art in reference to EP Pat. No. 168865. It should be rewritten since this figure is not prior art.

Appropriate correction is required.

Drawings

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "25" and "26" have both been used to designate conveyor. A proposed

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drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "26" has been used to designate both the conveyor and circumferential surface of the discs. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

7. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 8,10, and 21. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7 and 11-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "Device" in the very beginning of the preamble. There is insufficient antecedent basis for this limitation in the claim. The claim should read - -A device- -.

Claims 2-7 depend from rejected claim 1 and include all of the limitations of claim 1 thereby rendering these dependent claims indefinite.

Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The first step of the method "introducing into device for removing fillets" is unclear and it is not known what exactly the applicant is claiming.

Claim 11 recites the limitation "Method" in the preamble. There is insufficient antecedent basis for this limitation in the claim. The claim should read - -A method- -.

Claim 11 recites the limitation "the or each scraping device" in referring to step 3 of the method. There is insufficient antecedent basis for this limitation in the claim. The claim should read - -a or each scraping device- -.

Claim 11 recites the limitation "the disc-like scraping elements" in referring to the scraping devices. There is insufficient antecedent basis for this limitation in the claim.

Claims 12-13 depend from rejected claim 11 and include all of the limitations of claim 11 thereby rendering these dependent claims indefinite.

Claim 13 recites the limitation "the two sides" in referring to the poultry carcass. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

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9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 and 11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,984,770 to Asano et al. in view of GB Pat. No. 2129278 to Meyn.

Referring to claim 1, Asano et al. discloses a device for removing the fillets from the eviscerated carcasses of poultry whose extremities have been detached including at least one measuring device - 21 for measuring the individual dimensions of the carcass, at least one control unit - 22 and at least one scraping device, characterized in that the measuring device - 21 is connected via the control unit - 22 to the at least one scraping device - 15 and 16 for the purpose of communicating wherein the measuring device - 21 is designed for the detection of body joints - see for example figures 1-11 and column 11. Asano et al. does not disclose the or each scraping device is constructed as a disc-like scraping element. Meyn does disclose the or each scraping device - 27 is constructed as a disc-like scraping element. Therefore it would have been obvious to one of ordinary skill in the art to take the fillet removing device of Asano et al. and add the disc-like scraping elements of Meyn, so as to make the scraping element more durable and longer lasting in that the entire outer surface of the disc-like scraping element comes into contact with the poultry carcass at intervals depending on the speed of rotation instead of only a small portion of the scraper element coming in contact with the carcass.

Referring to claim 2, Asano et al. as modified by Meyn further discloses two scraping devices - 15 and 16 are provided - see for example figures 1-11 of Asano et al.

Referring to claim 3, Asano et al. as modified by Meyn further discloses the or each scraping device comprises at least two disc-like scraping elements – 27 – see for example figure 1 of Meyn. Therefore it would have been obvious to one of ordinary skill in the art to take the fillet removing device of Asano et al. as modified by Meyn and further add the two disc-like scraping elements of Meyn, so as to make the scraping element more durable and longer lasting in that the entire outer surface of the disc-like scraping element comes into contact with the poultry carcass at intervals depending on the speed of rotation instead of only a small portion of the scraper element coming in contact with the carcass.

Referring to claim 4, Asano et al. as modified by Meyn further discloses the or each scraping element – 27 is of rotatable construction – see for example figure 1 of Meyn. Therefore it would have been obvious to one of ordinary skill in the art to take the fillet removing device of Asano et al. as modified by Meyn and further add the scraper elements being rotatable of Meyn, so as to make the scraping element more durable and longer lasting in that the entire outer surface of the disc-like scraping element comes into contact with the poultry carcass at intervals depending on the speed of rotation instead of only a small portion of the scraper element coming in contact with the carcass.

Referring to claim 5, Asano et al. as modified by Meyn further discloses that at least one scraping device – 15 comprises an element – 30 and 31 for pulling back the tender sinew – see for example figures 1-11 of Asano et al.

Referring to claim 6, Asano et al. as modified by Meyn further discloses the disc-like scraping elements – 27 are of pivotable construction such that the circumferential surfaces of their discs are arranged so that they can be rolled over the wishbone from the body joint of the

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poultry carcass – see for example figures 1-4 of Meyn. Therefore it would have been obvious to one of ordinary skill in the art to take the fillet removing device of Asano et al. as modified by Meyn and further add the scraping elements rolling over the wishbone from the body joint of Meyn, so as to ensure that the carcass is scraped over its entire surface running along the breast to ensure proper removal of the breast fillets.

Referring to claim 7, Asano et al. as modified by Meyn further discloses that in front of each scraping device – 15 and 16 in the direction of conveying is arranged at least one measuring device – 21 – see for example figures 1-11 and column 11 of Asano et al.

Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,021,024 to Villemin et al. in view of Meyn.

Referring to claim 11, Villemin et al. discloses a method for removing the fillets from the eviscerated carcasses of poultry whose extremities have been detached including the steps of introducing into the device for removing fillets, detection of the individual carcass dimensions by recording carcass-specific data – see for example figure 3, control of the or each scraping device and mounting of scraping elements on previously determined body joint points – see for example figure 3, subsequent detachment of the fillets from the skeleton by the scraping elements, and final and complete detachment of the fillets by subsequent scraping tools – H and J – see for example figure 1. Villemin et al. does not disclose the scraping elements are disc-like. Meyn does disclose the scraping elements – 27 are disc-like – see for example figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the method for removing fillets of Villemin et al. and add the disc-like scraping elements of Meyn, so as to make the scraping elements more durable and longer lasting in that the entire outer surface of the disc-like

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scraping element comes into contact with the poultry carcass at intervals depending on the speed of rotation instead of only a small portion of the scraper element coming in contact with the carcass.

Referring to claim 12, Villemin et al. as modified by Meyn further discloses the detection of the carcass dimensions is effected by mechanical sensing of the body joint points – see for example figure 3 and columns 4-5 of Villemin et al.

Referring to claim 13, Villemin et al. as modified by Meyn further discloses the two sides of the poultry carcass are processed one after the other – see for example figure 3 and columns 4-5 of Villemin et al.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to poultry filleting devices in general:

U.S. Pat. No. 4,962,568 to Rudy et al. – shows measuring means and controls

U.S. Pat. No. 5,269,722 to Diesing et al. – shows two scraper devices

U.S. Pat. No. 5,314,374 to Koch et al. – shows mechanical sensing of carcass

U.S. Pat. No. 5,545,083 to Bargele et al. – shows fillet removing scraping element

U.S. Pat. No. 5,833,527 to Hazenbroek et al. – shows multiple scraping devices

U.S. Pat. No. 6,007,416 to Janssen et al. – shows fillet removing scraper elements

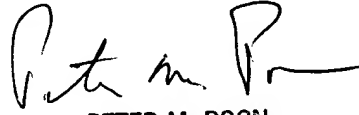
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U.S. Pat. No. 6,033,298 to Visser – shows poultry fillet removing device

JP Pat. No. 5-23100 to Asanome et al. – shows fillet-removing device

11. Any inquiry concerning this communication from the examiner should be directed to David Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on Monday-Friday from 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574.


PETER M. POON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3000